

ORIGINAL

BEFORE THE

Federal Communications Commission

WASHINGTON, D.C.

JUL 10 2001

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
 Amendment of Section 73.202(b),) MM Docket No. 01-107/
 Table of Allotments,) RM-10057
 FM Broadcast Stations.)
 (Mount Pleasant and Hemlock, Michigan))

To: Chief, Allocations Branch

**REPLY TO COMMENTS OF THE MACDONALD BROADCASTING COMPANY
 IN RESPONSE TO NOTICE OF PROPOSED RULE MAKING**

Wilks License Co., LLC ("Wilks"), licensee of WCEN-FM, Channel 233C1, Mount Pleasant, Michigan, by its undersigned attorneys, hereby replies to the Comments filed in this proceeding by the MacDonald Broadcasting Company ("MacDonald").¹ MacDonald claims that Wilks' proposal to reallocate Channel 233C1 from Mount Pleasant, Michigan to Hemlock, Michigan and to modify the license of WCEN-FM to specify Hemlock as its community of license constitutes an attempt to move WCEN-FM into the city of Saginaw. As an initial matter, Wilks notes that MacDonald's Comments are untimely and should therefore be dismissed. In any event, the Comments lack substantive merit because, as Wilks amply demonstrated in its initial Petition, Hemlock is a community deserving of a first local aural transmission service.

¹ This proceeding was originally commenced by Wilks Broadcasting LLC. The assignment of WCEN-FM's license to Wilks License Co., LLC (FCC File No. BALH-20010420AAP), a wholly owned subsidiary of Wilks Broadcasting LLC, was granted on May 11, 2001 and was consummated on May 31, 2001. The new licensee timely filed Comments in this proceeding reiterating its interest in the reallocation on June 25, 2001.

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Accordingly, MacDonald's Comments should be rejected and Wilks' reallocation request promptly granted.

Discussion

I. MacDonald's Comments are Untimely and Must Therefore be Dismissed

Initial comments in this proceeding were due on or before June 25, 2001, and reply comments were due on or before July 10, 2001. MacDonald's Comments were not filed until June 29, 2001. Accordingly, the Comments were untimely filed and must be dismissed without consideration. Moreover, contrary to MacDonald's claim, its Comments may not be treated as a reply to Wilks' Comments since, by its own admission, MacDonald had not obtained a copy of Wilks' Comments at the time that it filed its pleading. *See* MacDonald Comments at 1, n.1. MacDonald's Comments are directed solely to issues raised in the Commission's Notice of Proposed Rule Making in this proceeding, and MacDonald has offered no reason why it could not have submitted these Comments in a timely fashion. Therefore, the Comments must be treated as untimely filed initial comments and dismissed. *See Amendment of Section 73.622(b), Table of Allotments, Digital Television Broadcast Stations, Chattanooga, Tennessee, DA 01-381, MM Docket No. 99-268, released February 16, 2001 (rejecting attempt to characterize untimely initial comments as reply comments).*²

II. MacDonald's Comments Lack Substantive Merit Because Hemlock is a Community Deserving of a First Local Aural Transmission Service

In any event, MacDonald's Comments lack any substantive merit. MacDonald claims that the proposed city of license change is a move-in from Mount Pleasant to Saginaw. *See*

² Nevertheless, should the Commission accept MacDonald's Comments, Wilks notes that MacDonald may not submit any additional comments in this proceeding.

MacDonald Comments at 2. Initially, Wilks notes that Hemlock, a Census Designated Place with a population of approximately 1,601 people, is unquestionably a community deserving of a first local aural transmission service. As Wilks demonstrated in its initial Petition, Hemlock has its own post office, zip code, and school system as well as local businesses and social and cultural organizations that identify themselves with the community. *See* Wilks Petition at 2-3. Thus, finding Hemlock to be a community for allotment purposes is entirely consistent with Commission precedent. *See id.* and cases cited therein. Moreover, Commission rules require that licensees serve their communities of license. *See, e.g.,* 47 C.F.R. § 73.315 (requiring an FM licensee to place a city grade signal over its principal community). Thus, if Wilks' reallocation request is granted, WCEN-FM will be required to serve Hemlock as Wilks proposes.

MacDonald's contention that "[t]he only conceivable reason for the city of license change is to permit identification of WCEN with the City of Saginaw," MacDonald Comments at 2, is absurd. The Commission's rules require broadcast stations to specify their communities of license in their station identification announcements; thus, with respect to the listening public, WCEN-FM must be identified with its licensed community. *See* 47 C.F.R. § 73.1201. In fact, grant of the requested reallocation will permit WCEN-FM to identify with Hemlock, a community deserving of its own local station, and to take advantage of economies of scale by collocating the WCEN-FM studios (but not the transmitter site) with those of Wilks' Saginaw and Carrollton stations, thereby conserving resources that may be better spent on improved programming and service to WCEN-FM's listeners.

MacDonald points out that WCEN-FM's main studio is currently colocated with the main studios of Wilks' Saginaw and Carrollton stations. Wilks, however, informed the Commission of that fact and filed on January 12, 2001 a Request for Forbearance from application of the main studio rule to WCEN-FM. That Request remains pending. Thus, Wilks has been fully candid

with the Commission, and MacDonald has not disclosed any information of which the Commission was unaware. MacDonald also submits a statement from a resident of Saginaw who visited the WCEN-FM main studio to view the station's public file and who, by his own admission, had no trouble reviewing the file. Finally, MacDonald quotes statements from a Saginaw newspaper, ostensibly made by WCEN-FM's marketing manager, to the effect that "[t]he move . . . does not change WCEN's operations or programming." MacDonald Comments at 3. This statement, however, is entirely consistent with the fact that WCEN-FM has not and will not move its transmitter or in any way deprive existing listeners of service. It is impossible to see how any of MacDonald's "revelations" demonstrate that WCEN-FM's proposed move "is merely a subterfuge for a move to the larger city." MacDonald Comments at 3.

Nevertheless, in contending that such "subterfuge" is "apparent," MacDonald claims that a *Huntington-Tuck* analysis is required. See *Headland, Alabama, and Chattahoochee, Florida*, 10 FCC Rcd 10352 (1995); *Faye and Richard Tuck, Inc.*, 3 FCC Rcd 5374 (1988). It is well settled, however, that a *Huntington-Tuck* analysis is not required where, as here, a licensee is neither changing its transmitter site nor migrating to a location within an Urbanized Area. See, e.g., *Kankakee and Park Forest, Illinois*, DA 01-700, MM Docket No. 99-330, released March 23, 2001; *Lampasas and Leander, Texas*, 15 FCC Rcd 6113 (2000); *Oceanside and Encinitas, California*, 14 FCC Rcd 15302 (1999); *Shelby and Dutton, Montana*, 14 FCC Rcd 9514 (1999). Thus, as Hemlock is located outside the Saginaw Urbanized Area, no *Huntington-Tuck* analysis is required.

Conclusion

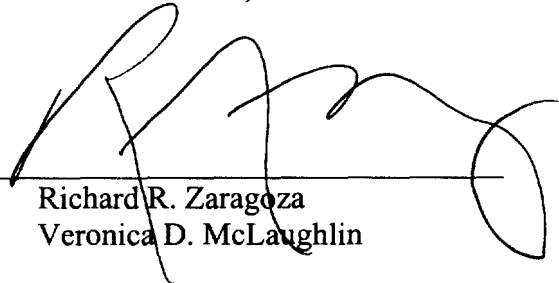
As Wilks has previously demonstrated, reallocation of Channel 233C1 from Mount Pleasant to Hemlock and modification of WCEN-FM's license to specify Hemlock will result in a preferential arrangement of allotments as it will permit WCEN-FM to provide a first local aural

transmission service to a community currently without such service without depriving Mount Pleasant of local transmission service or any listeners of existing reception service.

MacDonald's untimely Comments have not demonstrated otherwise. Accordingly, Wilks urges the Commission to dismiss MacDonald's Comments and, in any event, to grant the requested reallocation and modification of WCEN-FM's license.

Respectfully submitted,

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Dated: July 10, 2001

CERTIFICATE OF SERVICE

I, Renee Williams, do hereby certify that on this 10th day of July 2001, I mailed by first-class United States mail, postage prepaid, copies of the foregoing **“REPLY TO COMMENTS OF THE MACDONALD BROADCASTING COMPANY IN RESPONSE TO NOTICE OF PROPOSED RULE MAKING”** to the following:

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*Via Hand Delivery